United Nations A/67/372

General Assembly

Distr.: General
14 September 2012

Original: English

Sixty-seventh session
Item 53 of the provisional agenda*
Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem

Report by the Secretary-General**

Summary

The present report is submitted pursuant to General Assembly resolution 66/79, concerning Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem. The report examines themes identified in resolution 66/79. In Gaza, these include the firing of rockets and mortars against Israeli civilian areas, killings and injuries in the course of hostilities and the enforcement of access-restricted areas and the blockade. In the West Bank, including East Jerusalem, the themes examined include home demolitions and forced evictions; the situation of the Bedouin communities; the continued construction of the Wall; the excessive use of force by Israeli security forces, including in the policing of demonstrations; and the arrest and detention of Palestinians by the Israeli authorities, with a particular focus on the practice of administrative detention.

* A/67/150.

** The present report is being submitted late in order to allow maximum time for Member States, United Nations system agencies, non-governmental organizations and human rights defenders to submit relevant information.

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I. Introduction

1. The present report examines progress made in the implementation of General Assembly resolution 66/79, entitled "Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem". In the resolution, the Assembly demanded, among other things, that Israel cease all practices aimed at altering the character, status and demographic composition of the Occupied Palestinian Territory, and respect its obligations under international law, including with regard to practices and actions that violate the human rights of the Palestinian people. The period covered is from 1 July 2011 to 15 June 2012. The information contained in the report is based primarily on monitoring and other information-gathering activities carried out by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other United Nations entities in the Occupied Palestinian Territory. It also contains information obtained from Israeli, Palestinian and international non-governmental organizations (NGOs), human rights defenders and media sources.

2. In relation to Gaza, the report examines the firing of rockets and mortars against Israeli civilian areas, killings and injuries in the course of hostilities, the enforcement of access-restricted areas and the blockade of Gaza. With regard to the West Bank, the report examines Israeli practices affecting the character, status and demographic composition of the Occupied Palestinian Territory, including those leading to the displacement of Palestinians, the use of force by Israeli security forces, and arrest and detention by Israeli authorities, in particular the practice of administrative detention. The lack of protection afforded to the Palestinian people in the Occupied Palestinian Territory, including in relation to the impunity enjoyed by Israeli security forces for violations of international human rights law and international humanitarian law, is highlighted throughout the report.

3. It is noted that several themes identified in resolution 66/79 are addressed in separate reports of the Secretary-General submitted to the General Assembly at its sixty-seventh session. These themes include Israeli settlements in the Occupied Palestinian Territory, which are addressed in the report of the Secretary-General pursuant to General Assembly resolution 66/78. It is further noted that the human rights situation in the Occupied Palestinian Territory is comprehensively reviewed in the report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1 (A/HRC/19/20).

II. Implementation of resolution 66/79

A. The situation in Gaza

1. The blockade of Gaza

4. Movement of Palestinians out of Gaza, and access within Gaza to food, basic utilities, housing, education, work, health and an adequate standard of living continued to be severely restricted. Palestinians have experienced difficulties when requesting to cross the border to seek medical treatment in the West Bank, including East Jerusalem, owing to delays of 7 to 10 days for permit applications. Between July and December 2011, 4,803 applications were filed seeking authorization to

travel to Israel by way of Erez for medical treatment. Authorization was granted to 4,457 applications and denied to 101 patients. In July 2011, one patient died while awaiting authorization.[1] OHCHR has noted a pattern of people being arrested, on alleged security grounds, after already having their permits approved.

5. The Gaza economy remained at a standstill, with Gaza's imports continuing to fall significantly short of the pre-2007 level. Apart from a limited number of United Nations projects, Israel continued barring the entry of several items that are vital for the process of reconstruction and economic recovery (e.g., construction materials, spare parts for water and sanitation projects). The unemployment rate remains one of the highest worldwide, with some 28.4 per cent of Gaza's participating workforce unemployed.[2]

6. United Nations system agencies and other international organizations have voiced concerns about the length of time required for and the costs associated with the Israeli approval process for international humanitarian projects in Gaza, which present considerable challenges for the population in the Gaza Strip and for recovery efforts in general.

7. The blockade has continued to severely restrict Gaza's exports, preventing the population in Gaza from maintaining their livelihoods and realizing their right to an adequate standard of living. As of June, Gaza exports represented only 2 per cent of the pre-2007 level.[3] On 22 January, Israeli authorities allowed the first non-agricultural exports from Gaza since the start of the blockade in June 2007. March 2012 witnessed the first transfer of goods — a pilot transfer of 140 metric tons of locally produced fortified date bars for a World Food Programme (WFP) school feeding programme in the West Bank — from the Gaza Strip to the West Bank since the start of the blockade. The transfer occurred after WFP had received the approval of the Government of Israel. Nevertheless, the crossing's limited capacity, imposed back-to-back procedure, and intense Israeli security requirements on outgoing cargo from Gaza resulted in a daily transfer limit of two truckloads.[4] Israel argues that these considerations require the continuing restrictions on exports from Gaza, preventing Gaza's products from reaching their markets in Israel and the West Bank.

2. Enforcement of access-restricted areas

8. Israel continued to impose restrictions on Palestinians accessing areas located within Gaza up to 1,500 metres from the Green Line. Palestinians entering or approaching these areas were regularly subjected to warning shots and, in some cases, were directly targeted with live ammunition. In 41 incidents during the period under review, Israeli forces fired what were reported to be warning shots at Palestinian farmers working on their land and at rubble scrap collectors. Incidents in the access-restricted area claimed the lives of two Palestinian civilians and resulted

[1] Information obtained from the World Health Organization Gaza on 5 July 2012.

[2] Palestinian Central Bureau of Statistics, Labour Force Survey, April-June 2012, Round (Q2/2012), 15 August 2012.

[3] Gisha-Legal Center for Freedom of Movement, "Graphing 5 years of closure", June 2012, available at http://www.gisha.org.

[4] Office for the Coordination of Humanitarian Affairs Occupied Palestinian Territory, *The Monthly Humanitarian Monitor*, March 2012.

in the injury of 82 civilians.[5] On 13 March, two Palestinians were injured by Israeli gunfire in an access-restricted area during a funeral. Between 28 March and 3 April 2012, the Israeli Air Force dropped pamphlets notifying the population of the 300-metre access-restricted area that they were not allowed in the area close to the fence with Israel. However, OHCHR routinely receives allegations that, in practice, the access-restricted area is vigorously enforced up to 500 metres from the fence.

9. Israeli naval forces continued to restrict the access of Palestinian fishermen to 3 nautical miles from the coast. This policy, often enforced through the use of live ammunition, severely limited access to fishing grounds. Palestinian fishermen risk arbitrary detention and confiscation of their boats by the Israeli Naval Forces. According to information gathered by local human rights organizations, a total of 66 Palestinian fishermen were detained and 18 boats were confiscated during the reporting period. In these cases, fishermen reported that they had been within the 3-nautical-mile limit and had posed no threat to Israeli naval forces. In August 2011, several boats which had been confiscated by Israel between 2010 and 2011 were returned. However, Israel had dismantled their motors, stating that they were over 25 horsepower and therefore qualified as "security equipment", and thus could not be exported to Gaza owing to their being classified as "security equipment". Israel also demanded that the owners of the boats pay fees of between NIS 3,500 and 5,000 each (approximately between $900 and $1,300) for transferring the boats from Israel.

10. In the past, the methods used to enforce the access-restricted areas imposed by Israel have not conformed to international law, have violated rules against the use of force by law enforcement officials and have resulted in significant loss of life (see A/66/356, para. 25). During the reporting period, OHCHR documented two incidents in which fishermen were shot at. These enforcement methods violate the international humanitarian law principle of distinction, which establishes that civilians are not to be targeted. Furthermore, the confiscation of fishing boats from persons that rely on fishing as their means of livelihood prevents them from exercising their right to food and to an adequate standard of living, and constitutes a violation of article 46 of the Hague Regulations, which prohibits the confiscation of private property.[6]

3. Firing of rockets and mortars against Israeli civilian areas

11. Palestinian armed groups continued firing rockets and mortar shells at Israel. A total of 752 rockets, including 642 homemade rockets and 110 Grad rockets, and 175 mortar shells were fired during the reporting period.[7] The vast majority of rockets fell short of their apparent targets and exploded in open areas in southern Israel. Many projectiles heading towards civilian populated areas were intercepted by Israel's "Iron Dome" anti-missile defence system. Rocket and mortar fire towards southern Israel resulted in the death of one Israeli civilian. In March 2012,

[5] Information made available by the Office for the Coordination of Humanitarian Affairs Sub-Office in Gaza.

[6] Regulations concerning the Laws and Customs of War on Land (Hague Regulations), annex to the 1907 Hague Convention respecting the Laws and Customs of War on Land.

[7] Data made available by the United Nations Department of Safety and Security to OHCHR on 17 June 2012.

11 Israeli civilians were injured by such rocket fire.[4] One Palestinian child was also killed, and six others injured, by a rocket fired by Palestinian armed groups.

12. The poor accuracy of these rockets means that their use is inherently indiscriminate, and therefore contrary to international humanitarian laws prohibiting indiscriminate attacks, the use of inherently indiscriminate weapons, and acts aimed at spreading terror among the civilian population. Further, it has been alleged that such rockets and mortars are often fired from densely populated areas, which would violate customary international humanitarian law.

4. Killings and injuries in the course of hostilities

13. Israeli-Palestinian conflict-related violence claimed the lives of 90 Palestinians in Gaza, including 31 civilians, of whom 8 were children. Hostilities during the reporting period resulted in the injury of 371 Palestinians in Gaza, including 299 civilians, of whom 85 were children. The most intense escalations related to armed conflict occurred in August 2011 and March 2012. In August 2011, hostilities resulted in the death of 29 Palestinians, including 9 civilians, and 101 injured, including 89 civilians. In March 2012, hostilities in Gaza and southern Israel again claimed the lives of 25 Palestinians, including 5 civilians, and resulted in the injury of 116 Palestinians, 103 of them civilians.[4] Most Israeli air strikes appeared to target rocket-launching crews, military training bases and tunnels under the Gaza-Egypt border. However, civilian infrastructure was affected. In August, Israeli air strikes damaged several homes and public facilities, including a United Nations Relief and Works Agency (UNRWA) school, a not-yet-operational sewage pumping station and a university campus.

14. These cases raise questions regarding the respect on the part of the Israeli Defense Forces (IDF) for the basic provisions of international law when planning and carrying out attacks. These provisions include the obligation of combating parties to take the necessary precautions to minimize harm to civilians and civil objects, and to distinguish between civilians and combatants and between civilian objects and military targets. The principle of proportionality forbids an attack that may be expected to cause incidental loss to civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. The principle of necessity allows the use of violence insofar as it is appropriate to accomplish the military objective. The killing of civilians not taking part in hostilities may also violate the right to life as guaranteed by article 6 of the International Covenant on Civil and Political Rights.

B. The situation in the West Bank including East Jerusalem

1. Excessive use of force by Israeli security forces

(a) Killings and injuries during operations of Israeli security forces

15. Excessive use of force by Israeli security forces, including IDF and the Israeli Border Police, in their policing operations in the West Bank continued to be a cause of concern during the reporting period. Nine Palestinian civilians, including 2 children, were killed, while 2,453 Palestinian civilians were injured, including 318 children, by Israeli security forces operating in the West Bank. The total number

of injuries increased by 35 per cent compared with that in the same reporting period in 2011.[8] While most injuries occurred during demonstrations, civilians were also injured and killed as a result of the excessive use of force during other forms of military operations. The following case was monitored by OHCHR.

16. On 27 March 2012, three brothers in Rammun noticed two unknown men on the neighbour's car. Thinking that they might be thieves, the brothers went out to check, and asked the two men to identify themselves. The men responded in Arabic but did not identify themselves. A confrontation ensued, and the two unidentified men opened fire at the three brothers. One brother was shot in the leg, another was shot in the neck, and the third was shot in the abdomen. Several dozen uniformed IDF soldiers suddenly appeared. Two of the brothers were shot by uniformed soldiers, with one being struck seven times at close range. The soldiers checked the two men — who, it later turned out, were undercover IDF soldiers — for injuries, and they departed forthwith.[9] Palestinian ambulances were prohibited by IDF soldiers from providing medical assistance to the wounded. After approximately 40 minutes, the wounded were put in IDF jeeps and transported to Taybeh junction. Crews from two Palestinian ambulances requested to be allowed to assist the wounded, but the IDF soldiers again refused. Israeli ambulances eventually took the wounded to a hospital in Jerusalem. The man who had been shot seven times at close range died of his injuries. An autopsy report obtained by OHCHR confirmed that the victim had died as a result of "live fire shot from close range".[10] The two other brothers were released from the hospital several days after the incident.

17. In the West Bank, Israeli forces act in a law-enforcement capacity and are therefore bound by article 6 of the International Covenant on Civil and Political Rights and article 43 of the Hague Regulations, in addition to general principles on the use of force by law enforcement officials, including the principles of necessity and proportionality contained in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990,[11] and the Code of Conduct for Law Enforcement Officials, 1979 (see General Assembly resolution 34/169, annex). Independent, prompt and effective investigations into such incidents are critical to ensure accountability for deaths and injuries. Should negligent or unlawful behaviour be identified during such investigations, judicial and/or disciplinary proceedings should be initiated against those responsible. The investigation should also seek to determine whether the soldiers involved acted in conformity with the relevant internal regulations concerning, as applicable, crowd-control methods and open-fire regulations, as well as whether these regulations are consistent with international standards.

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[8] Information received from the Office for the Coordination of Humanitarian Affairs.

[9] On 18 April, Israeli media reported that the unit involved in the incident was the "Duvdevan" unit (known for their undercover operations) and that they were on a training mission when two undercover soldiers were attacked by three men. See http://www.ynetnews.com/articles/0,7340,L-4217835,00.html.

[10] Autopsy report for Rashad Deeb Hassan Shoukha dated 24 June 2012, issued by the Palestinian National Authority, Ministry of Justice, Palestinian Medico Legal Center.

[11] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

(b) Excessive use of force in the policing of demonstrations and the right to freedom of expression

18. During the reporting period, Palestinian communities across the West Bank organized protests in response to the Israeli authorities' confiscation of privately owned Palestinian land for the construction of settlements, the expansion of already existing settlements, the construction of the Wall, home demolitions, and the eviction of Palestinians from their homes or continuous violence by settlers against Palestinians and their property. Protests took place on a regular basis in about 16 different locations across the West Bank, including Nabi Saleh, Bil'in, Ni'lin, al-Ma'sara, 'Assira, Kufr Ed-Deek, Kafr Qaddum, Qaryout, Beit Ummar, al-Walaja, Hebron (Shuhada Street), Cremisan (Beit Jala), Nahalin, 'Araba, Silwan and Sheikh Jarrah. The following concerns were identified during such demonstrations and need to be addressed.

Freedom of expression and freedom of assembly denied

19. Military Order 101 "Regarding the Prohibition of Acts of Incitement and Hostile Propaganda" (the Order), issued by the Commander of IDF in the West Bank region on 27 August 1967, regulates the right of Palestinians to demonstrate in the West Bank. The Order is excessively restrictive and prevents Palestinians from exercising their right to freedom of expression. The Order describes "assembly", "rally" and "procession" as follows. An "assembly" is "ten or more persons gathering for the purpose of a speech or discussion on a political topic or a topic that may be interpreted as political". A "rally" is "ten or more persons gathering for a political purpose or for a matter that could be interpreted as political". A "procession" is "a group of ten or more persons advancing or intending to advance from a place to place, for a political purpose or for a matter that could be interpreted as political, whether or not they are actually moving or have organized themselves as a group" (sect. 1: Definitions). While the Order outlaws "assemblies, processions and rallies" that take place without a permit issued by a military commander, it does not enunciate in any way how this permit should be sought or the conditions for such a permit to be issued (sect. 3A). The Order prevents Palestinians from flying flags or distributing political material and outlaws "incitement" by "any person who orally or in any other way attempts to influence public opinion in the region in a way that is liable to disturb public peace or order, or carries out any action or possesses any object with the intention of executing or facilitating the execution of such an attempt" (sect. 7). The framework established by the Order imposes undue restrictions on the right of Palestinians to freedoms of assembly, opinion and expression. In practice, a Palestinian family of 10 persons or more sitting in their home and discussing politics would be considered an illegal assembly pursuant to the Order.[12] As pointed out by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Military Order 101 represents a "sweeping prohibition of expression deemed to be 'political' which is vague and subject to interpretation" (see A/HRC/20/17, para. 78).

[12] See also B'Tselem, "The right to demonstrate in the occupied territories", July 2010, available at http://www.btselem.org/download/20100715_right_to_demonstrate_eng.pdf.

Unnecessary and disproportionate use of force against unarmed protesters

20. Israeli security forces respond to peaceful assemblies through the use of various crowd control means. As explained above, Israeli security forces in the West Bank act in a law-enforcement capacity and are bound by a number of international standards, including the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These documents reflect standards that are internationally agreed upon, which national authorities need to integrate into their applicable procedures and training programmes. OHCHR has documented numerous incidents where the use of force by Israeli security forces during protests raised a number of concerns.

21. Injuries and the use of unnecessary and disproportionate force are documented on a weekly basis by United Nations entities and by Palestinian, Israeli and international human rights organizations. For example, in the village of Nabi Saleh, injuries, arrests and other practices, including night raids on private homes, often accompanied by damages to and confiscation of private property, occur on a weekly basis. In the first five months of 2012, a total of 1,204 Palestinians were injured by Israeli security forces during demonstrations that took place in the West Bank, 584 of them in May alone, including 12 women and 37 children.[13]

Targeting of journalists and media personnel

22. Journalists should be allowed to report on protests in safety and free from intimidation and violence. OHCHR documented four cases during the first half of 2012, where journalists or photographers appear to have been directly targeted by IDF or the Border Police, including with rubber-coated metal bullets, despite being clearly visible as members of the press by wearing "PRESS" vests and carrying cameras or other equipment. The targeting by Israeli security forces of journalists and photographers covering protests in the West Bank, including East Jerusalem, is a cause of concern.

The death of Mustafa Tamimi

23. On 9 December 2011, during clashes between Palestinians and Israeli security forces in Nabi Saleh, an Israeli soldier in the back of an armoured vehicle fired tear gas, at a distance of less than 5 metres, directly at a Palestinian man, Mustafa Tamimi, who had been throwing stones at the vehicle. The tear gas canister hit the victim below his right eye. He immediately fell to the ground and was eventually taken to a hospital in Petah Tiqwa. On the following morning, Mr. Tamimi was pronounced dead, owing to injuries sustained from this incident. Photos of the incident were obtained by OHCHR.

24. Statements by IDF following the incident indicated that two separate investigations had been initiated by Israeli authorities, one of which was to be concluded by 20 December 2011. In a letter dated 19 January 2012 to the Permanent Mission of Israel to the United Nations in Geneva, OHCHR requested information on the status and outcome of the two investigations and on the bodies involved in the investigations. OHCHR also requested information on the rules of engagement and other applicable regulations on the use of crowd-control weaponry, including

[13] Office for the Coordination of Humanitarian Affairs Occupied Palestinian Territory, *The Monthly Humanitarian Monitor*, May 2012, p. 3.

firing tear gas and the use of rubber-coated metal bullets. To date, no response has been received from the Israeli authorities.

2. Arrest and detention in particular the phenomenon of administrative detention

(a) Palestinian prisoners in Israeli detention

25. The hunger strikes of two Palestinian detainees, Khader Adnan and Hanan Shalabi, to protest administrative detention were followed, beginning on 17 April 2012, by an organized mass hunger strike of approximately 1,700 Palestinians in Israeli detention. The detainees demanded, among other things, an end to solitary confinement, the practice of administrative detention by Israel, the resumption of family visits for detainees from Gaza and better conditions and treatment. On 14 May, the Israeli authorities reportedly agreed to end solitary confinement, to allow prisoners from Gaza to receive family visits and to discuss an improvement of detention conditions, as well as the conditional non-extension of administrative detention orders against certain Palestinians. The full and effective implementation of the deal is critical. The vast majority of Palestinians in Israeli detention are held in prisons and detention centres located outside the occupied territory, in clear violation of international humanitarian law, which provides that residents of an occupied territory are to be detained within the occupied territory.[14]

(b) The practice of administrative detention

26. Administrative detention has been practised in the Occupied Palestinian Territory by the Israeli authorities since the beginning of the occupation in 1967. Currently, over 300 Palestinians are being held under the regime of administrative detention, the majority of them under Military Order 1591. While administrative detention is not prohibited per se under international law, a number of principles govern its use: it should only be used in an exceptional manner and only for imperative reasons of security; it should never be used as an alternative to criminal proceedings; if a person is suspected of a criminal offence, he or she should be charged and be tried by a regularly constituted court that is independent, impartial and respects all judicial guarantees; administrative detention must be based on procedures established by law and should be subject to review by an independent and impartial body; the detainee must be allowed to receive effective legal assistance; and the detainee and his or her counsel should be present at the review of the lawfulness of the detention.

27. The Israeli practice of administrative detention falls short of these standards. One of the most problematic issues is that in most cases, evidence on which the detention order is based is kept secret and neither the detainee nor his or her counsel has access to it. These restrictions on access to the evidence are not limited to reviews by military courts, but also apply when decisions are appealed at the level of the High Court of Justice. However, according to human rights organizations, including B'Tselem, in most cases, the only information communicated to the detainee or his counsel for the reason of the detention is that the detainee is a member or activist of an armed group, without any further details.[15] Not allowing the detainee or his or her counsel access to "secret evidence" does not allow them to

[14] Art. 76 of the Fourth Geneva Convention of 1949.

[15] See http://www.btselem.org/administrative_detention/criticism_on_the_administrative_detention_order.

contest the reasons on which the detention order is based and therefore renders any review ineffective. According to the Working Group on Arbitrary Detention, military courts and military appeals court do not, generally, offer an effective means to challenge administrative detention orders, as they are not independent and impartial. Such courts consist of military personnel, who are subject to military discipline and are dependent on superiors within the military bureaucracy for promotion.[16]

(c) Palestinian children in Israeli detention

28. As at the end of May 2012, 234 Palestinian boys between the ages of 12 and 17 were in Israeli detention for alleged security violations, marking a 73 per cent increase since December 2011. Nineteen children from the West Bank were reportedly transferred to prisons inside Israel, in contravention of article 76 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949.[17]

29. In relation to the cases of detention mentioned above, a sample of 40 cases was documented through affidavits, including 17 that occurred in January and February 2012. All of the 40 Palestinian boys aged 13 to 16, who provided sworn affidavits, reported being subjected to ill-treatment by Israeli security forces. Sixty-seven per cent of the children suffered at least 10 different types of ill-treatment, including, but not limited to, being hand-tied excessively tightly, blindfolded, strip-searched, leg-tied, verbally abused, denied access to water and food and denied access to toilets, not informed of their rights, and not allowed the presence of a parent or lawyer.[18]

30. These practices violate Israel's obligations under the Convention on the Rights of the Child and provisions of international humanitarian law. Article 37 (b) of the Convention provides that "the arrest or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time". Article 76 of the Fourth Geneva Convention highlights that "proper regard shall be paid to the special treatment due to minors".

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[16] Conclusion of the Working Group on Arbitrary Detention, Opinion No. 5/2010 (Israel), para. 31 (see A/HRC/16/47/Add.1)

[17] Information received from the United Nations Children's Fund (UNICEF).

[18] Ibid. See also Office for the Coordination of Humanitarian Affairs Occupied Palestinian Territory, *The Humanitarian Monitor*, May 2012, pp. 7 and 8.

3. Israeli practices affecting the character, status and demographic composition of the Occupied Palestinian Territory, including those leading to the displacement of Palestinians

(a) Evictions and home demolitions in Area C and East Jerusalem[19]

31. Forced evictions are prima facie incompatible with international human rights law, in particular the right to adequate housing and freedom from arbitrary or unlawful interference with privacy, family and home, pursuant to article 11 of the International Covenant on Economic, Social and Cultural Rights and article 17 of the International Covenant on Civil and Political Rights. They are only justified in the most exceptional circumstances, must pursue a legitimate purpose and must be implemented in accordance with international law, including the prohibition of discrimination.

32. Between July 2011 and July 2012, the forced displacement of Palestinians continued, particularly among the already vulnerable Bedouin and herding communities in Area C. In comparison with 2010, displacement has almost doubled. Between July 2011 and June 2012, almost 909 Palestinians, 447 of them children, were forcibly displaced as a result of home demolitions by Israeli forces in the West Bank, including East Jerusalem. In total, Israeli forces destroyed almost 560 Palestinian-owned structures during the reporting period, of which 184 were residences. Most of the remaining structures were animal shelters (117), rainwater cisterns or pools (44) and mosques (2). Humanitarian assistance organizations have also had their materials confiscated on several occasions.[8]

33. In East Jerusalem, demolitions resumed in the last quarter of 2011, ending a de facto "freeze" since 2010. During the reporting period, 55 structures were demolished in East Jerusalem.[20] On 18 April 2012, the families of Khalid An Natshe and Suleiman An Natshe were forcibly evicted from their homes in the neighbourhood of Beit Hanina after an Israeli Jerusalem district court had ruled in favour of an Israeli citizen claiming ownership of part of the plot of land where the house is located. This resulted in a total of 13 Palestine refugees, 9 of whom are children, being rendered homeless. Another two Palestinian refugee families living in Beit Hanina, totalling 21 persons, faced imminent eviction at the end of the reporting period, as Israeli courts moved to execute a 1968 confiscation order.[21]

34. A growing concern is the increase in the number of obstacles for Palestinians wanting to use legal measures to prevent evictions and demolitions. Such obstacles may constitute violations of the right to an effective remedy pursuant to article 2 of

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[19] Under the 1993 Oslo Accords between Israel and the Palestine Liberation Organization, the West Bank was temporarily divided into three administrative zones referred to as Areas A, B and C. Area A includes the major Palestinian cities, and is under Palestinian civil and security authority. Area B comprises most Palestinian rural communities, and civil authority is under the Palestinian Authority, while security responsibilities are shared by both the Israeli and Palestinian authorities. Areas A and B make up roughly 38 percent of the West Bank. Approximately 62 per cent of the area of the West Bank is in Area C, where Israel retains authority over law enforcement and control over the building and planning sphere. The Oslo Accords called for the gradual transfer of power and responsibility in the sphere of planning and zoning in Area C from Israel to the Palestinian Authority (PA).

[20] Information received from the Office for the Coordination of Humanitarian Affairs. See also the report of the Secretary-General on Israeli settlements.

[21] Cases documented by UNRWA.

the International Covenant on Civil and Political Rights. Available information indicates that in 2012, the Israeli Civil Administration (ICA)[22] has dramatically decreased the time limits within which Palestinians can appeal "stop work" and demolition orders against their residential and livelihoods structures in Area C — from 14 days in the past to just a few days. If the hearing is not attended, the demolition can now be executed within three days. Recently, following the rejection of the appeal, demolitions have been executed within less than 24 hours. These dramatically reduced time frames effectively prevent Palestinians from lodging an appeal against demolition orders.

35. The Israeli authorities maintain that demolitions are carried out against structures which were built without the required building permits. However, in reality it is essentially impossible for Palestinians to obtain such permits.[23] The Security Council has not accepted claims by Israel that such cases in East Jerusalem are a matter for municipal authorities and domestic courts. By its resolution 478 (1980), the Council determined that "all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem ... are null and void and must be rescinded forthwith" (resolution 478 (1980)).

(b) The situation of Bedouin communities

36. In July 2011, ICA indicated its intention to "relocate" approximately 27,000 Bedouin and herding Palestinians living in Area C throughout the Jerusalem periphery, Jordan Valley and South Hebron Hills.[24] It was reported that the ICA plan involved the relocation of about 20 communities in the municipal area of the Maale Adummim settlement (encompassing some 2,300 Palestinians, 80 per cent of whom are Palestinian refugees), reportedly to a location where there were grave environmental and health safety concerns.[25] Between July 2011 and 15 June 2012, all 20 communities in the eastern periphery had experienced increasing pressure on their livelihoods, including repeated demolitions, settler violence, access restrictions and the disruption of basic services.[26] As at 15 June 2012, the planned relocation awaited the results of an environmental study mandated by the Israeli parliament.

37. The proposed transfer by Israel of Bedouins and other communities residing in the West Bank within the Jerusalem periphery raises serious concerns. Its implementation would amount to individual and mass forcible transfers and forced evictions contrary to Israel's obligations under international humanitarian and human rights laws. In the context of occupation, individual or mass forcible

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[22] ICA is a body of IDF in charge of coordinating Government activities in the occupied territories.

[23] This is examined in detail in the 2011 report of the Secretary-General on Israeli settlements (A/66/364). See also Office for the Coordination of Humanitarian Affairs documents, at http://www.ochaopt.org/documents/ocha_opt_jerusalem_report_2011_03_23_web_english.pdf and http://www.ochaopt.org/documents/ocha_opt_planning_crisis_east_jerusalem_april_2009_english.pdf.

[24] B'Tselem, "Israel plans to expel Bedouin communities from Area C, West Bank", report issued on 10 October 2011; and Israeli Committee Against House Demolitions, "Nowhere left to go — Arab al-Jahalin Bedouin ethnic displacement", report issued in October 2011.

[25] B'Tselem, see footnote 24 above.

[26] Information received from UNRWA. See also Office for the Coordination of Humanitarian Affairs Occupied Palestinian Territory, Fact-sheet: "Bedouin relocation: threat of displacement in the Jerusalem periphery", 1 September 2011.

transfers of protected persons are prohibited, except for temporary transfers for the security of the population or for imperative military reasons in the context of hostilities.[27] Neither of these are the case with the Bedouin communities. Even if the affected individuals express consent, the transfer would be forcible, unless there is genuine and fully informed consent of the affected persons. Consent would not be genuine in an environment marked by the use or threat of physical force, coercion, fear of violence or duress. Furthermore, the proposed transfer may entail the destruction of private property, which would raise serious concerns about the violation of the prohibitions on destruction of private property under international humanitarian law, pursuant to article 53 of the Fourth Geneva Convention and article 46 of the Hague Regulations of 1907, as well as violate article 17 of the Universal Declaration of Human Rights.[28]

(c) Issues of concern in East Jerusalem

Revocation of residency rights, including the situation of members of the Palestinian Legislative Council

38. Israel regulates the Palestinian residents of East Jerusalem as if they were other foreign nationals living in Israel, with no regard for their circumstances as protected persons under international humanitarian law. As such, Palestinian residents lose their permanent residency status if they reside outside Israel or East Jerusalem for a period of seven years, or if they obtain permanent residency or citizenship in another country, as stipulated in the Entry into Israel Regulations (regulation 11(a)). Human rights organizations reported that 101 Palestinians had their residency revoked in 2011, including 51 women and 20 minors.[29]

39. The situation of the four elected members of the Palestinian Legislative Council (PLC), Mohamed Abu-Teir, Ahmad Attoun, Mohamed Totah and Khaled Abu Arafeh, continues to be of concern. Following their election to the Council in 2006, their residency status was revoked by the Israeli Minister of Interior on grounds of their "lack of loyalty to the State of Israel", owing to their membership in the parliament of a "hostile entity". Mr. Abu-Teir was forcibly transferred from East Jerusalem to another part of the West Bank by Israeli security forces, and was subsequently rearrested by the Israeli authorities in September 2011. He is currently held in administrative detention. Following the initial rearrest of Mr. Abu-Teir, the three other PLC members sought refuge at the premises of the International Committee of the Red Cross (ICRC) in East Jerusalem. Mr. Attoun was arrested on the premises of ICRC in September 2011 and was forcibly transferred to another part of the West Bank on 7 December 2011. He remains at this location without any identification, which places him at risk of arrest and severely hinders his freedom of movement. Mr. Totah and Mr. Abu Arafeh were subsequently arrested by Israeli Special Forces from inside ICRC premises on 23 January 2012. Both were charged with illegal presence in Israel and are currently held by the Israeli authorities. The residency case of the four PLC members is yet to be decided by the Israeli High

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[27] Art. 49 of the Fourth Geneva Convention.

[28] Art. 17 of the Universal Declaration of Human Rights: (1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.

[29] See "Israel admits it revoked residency rights of a quarter million Palestinians since 1967", *Haaretz*, 12 June 2012.

Court. The case has been pending since 2006, impinging upon the rights of the four PLC members, notably to family life, movement and liberty.

40. The requirement of "loyalty to the State of Israel" is not only a violation of international humanitarian law, which prohibits the imposition of "allegiance to the hostile power",[30] but also violates other international human rights law obligations, including the right to freedom of opinion and expression and the prohibition of discrimination on political grounds.[31]

Closure of Palestinian non-governmental organizations in East Jerusalem

41. On 25 October 2011, four registered Palestinian NGOs[32] operating in Jerusalem were handed "closure orders" by the Israeli police for a period of one month, based on the Prevention of Terrorism Law of 1948. The orders were subsequently extended for a year and the offices of the NGOs sealed. While these orders can be appealed within two weeks, evidence is not revealed to persons filing the appeal, thereby preventing any meaningful appeal. According to human rights organizations, since 2001 the Israeli authorities have closed down at least 28 Palestinian organizations operating in Jerusalem that had been involved in educational, cultural and social activities for Palestinians in East Jerusalem, including the Orient House, the Jerusalem Chamber of Commerce, the Cultural Forum Society, the Higher Tourist Culture Center, the Small Project Center and the Arab Studies Society.

(d) Access, movement and continued construction of the Wall

42. In April 2012, the Israeli authorities implemented measures easing Palestinian movement to and from the four main cities in the West Bank (excluding East Jerusalem): Nablus, Tulkarm, Salfit and Ramallah. At the same time, there were some 540 obstacles obstructing Palestinian movement within the West Bank (excluding East Jerusalem). These included 59 permanently staffed checkpoints (excluding checkpoints on the Green Line), 26 partial checkpoints (staffed on an ad hoc basis) and about 455 unstaffed physical obstacles, including roadblocks, earth mounds, earthen walls, road gates, road barriers and trenches. This system of restrictions continues to hinder Palestinian access to basic services, including health, education and sources of water. Overall, 200,000 people from 70 villages are forced to detour between two and five times longer than the direct route to their closest city.[88] Such restrictions may constitute violations under article 12 of the International Covenant on Civil and Political Rights.[33]

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[30] Art. 45 of the Hague Regulations. Art. 49 of the Fourth Geneva Convention also prohibits the forcible transfer of protected persons, except when necessary to ensure the security of the civilians involved.

[31] For further information, see B'Tselem, at http://www.btselem.org/jerusalem/20100718_revocation_of_residency_of_hamas_mps; and Carter Center, at http://www.cartercenter.org/news/pr/palestine-072210.html.

[32] Shuaa Women's Association, Al-Quds Development Foundation, Work Without Borders and Saeed Educational Center.

[33] See para. 14 of International Covenant on Civil and Political Rights General Comment No. 27 (Freedom of movement): "Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected."

43. The Wall, in conjunction with its gate and permit regime, continues to be the single largest obstacle to Palestinian movement within the West Bank. Approximately 61.8 per cent of the 708-kilometre-long Wall is complete, more than twice the length of the 320-kilometre-long 1949 Armistice Line (Green Line) between the West Bank, not including East Jerusalem, and Israel. A further 8.2 per cent is under construction, and 30 per cent is planned but not yet constructed. When completed, the majority of the route, approximately 85 per cent, will run inside the West Bank, including East Jerusalem, rather than along the Green Line.

44. In its advisory opinion *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 9 July 2004, issued at the request of the General Assembly, the International Court of Justice concluded that Israel is obligated to cease construction of the Wall inside the Occupied Palestinian Territory, to dismantle the existing portions inside the Occupied Palestinian Territory and to make reparations for damages caused by the construction of the Wall.[34] Israel has yet to comply with the advisory opinion.

The Jordan Valley and Dead Sea area

45. The Jordan Valley and Dead Sea area covers around 30 per cent of the West Bank and is home to nearly 60,000 Palestinians. Eighty-seven per cent of the land is designated as Area C, virtually all of which is prohibited for Palestinian use, earmarked instead for the use of the Israeli military or Israeli settlers. An additional 7 per cent is formally part of Area B but is unavailable for development, as it was designated a nature reserve under the 1998 Wye River agreement. Palestinian access to and from the area is limited to six routes, four of which are controlled by Israeli checkpoints, severely restricting the movement of Palestinians. The restrictions on access to transportation routes, agricultural land and water resources hamper the Palestinian agricultural sector. The denial of access to the Dead Sea has also prevented the development of a potential source of revenue and employment. Meanwhile, Israeli settlers have developed profitable agricultural, mineral, touristic and other businesses.

The situation in An Nabi Samuel

46. The village of An Nabi Samuel, located 4 kilometres north of Jerusalem, is another example of a Palestinian community affected by the Wall. The village currently has a population of 290 persons. It witnessed waves of displacement, particularly during the 1967 war, the demolition of 46 houses by Israeli authorities in 1971 and the imposition of a permit regime that severely restricts construction in Area C. While the village is located outside the Israeli-defined boundaries of East Jerusalem, the construction of the Wall around Giva'at Ze'ev settlement in 2005 placed it on the "Jerusalem" side of the Wall. The village has become physically separated from its surroundings, and Palestinians' access between their homes and basic services in the rest of the West Bank has become regulated through a checkpoint. The majority of the village's population has West Bank identification documents, meaning that they cannot travel to East Jerusalem without obtaining permits from the Israeli authorities.[35] In addition to the restrictive zoning and

[34] Advisory opinion, paras. 142 and 150-153.

[35] Although there is no checkpoint separating the village from East Jerusalem, residents can be subjected to fines and/or arrest if they are found in East Jerusalem without permits.

planning regime in Area C, An Nabi Samuel faces the challenge of Israeli authorities having designated the area a protected national park. Hence, no new construction is permitted. As a result, the only school — a one-room structure (16 m^2) serving 10 students — cannot expand to provide adequate educational space. ICA issued a demolition order against a metal structure set up by the school to serve as a cover for the backyard. Through the Humanitarian Emergency Response Fund, an NGO implemented a project during the second half of 2011 through which it renovated the school (changing the window and door, building a fence around it with a gate to protect students from the main road and adding a sanitation unit). In response, Israeli authorities have issued a demolition order against the newly built fence. Israeli policies in An Nabi Samuel may constitute violations of international human rights law, among others, including with regard to the rights of Palestinians to freedom of movement and to own property. An Nabi Samuel is 1 of 16 Palestinian communities facing a similar situation.[36]

III. Recommendations

A. The situation in Gaza

47. **The Government of Israel should fully lift the blockade of Gaza, using means to address security concerns that do not violate the human rights of Gazans. The lifting of the blockade should include permitting the exportation of goods, should ensure that all necessary reconstruction materials can be delivered and should facilitate the movement of people to and from Gaza.**

48. **The Government of Israel should review methods used by IDF to enforce access restrictions on land and sea in Gaza. The methods should be consistent with Israel's international legal obligations and should not include the use of live ammunition against unarmed civilians. The Government of Israel should adopt measures that effectively ensure that any attack by IDF respects the principles of conduct of hostilities, namely, distinction, proportionality and precaution.**

49. **Palestinian armed groups must comply with international humanitarian law and immediately cease the indiscriminate firing of rockets and mortars. As a matter of priority, they should ensure that no such activities are carried out in densely populated areas.**

B. The situation in the West Bank including East Jerusalem

50. **The Government of Israel should take all necessary measures to prevent incidents of excessive use of force. This should include a review of regulations on the use of weapons and crowd-control means in operations carried out by all Israel security forces, to ensure that these regulations are in line with Israel's international legal obligations.**

[36] For more information see B'Tselem, http://www.btselem.org/freedom_of_movement/20080706_severing_nabi_samwil_from_wb.

51. The Government of Israel must respect the right of individuals to peaceful assembly in the West Bank, including East Jerusalem. The use of force against peaceful protesters should cease immediately, and Military Order 101 must be repealed or modified to ensure compliance with international human rights law.

52. Injuries and deaths caused by Israeli security forces should be fully investigated in line with international standards of promptness, independence, impartiality and thoroughness. Individuals found responsible must be held accountable and victims compensated.

53. The Government of Israel should commission an independent and thorough review of its policy of administrative detention, with a view to terminating the policy.

54. The Government of Israel should treat Palestinian children in detention with due consideration to their age, in accordance with international standards.

55. Israeli policies resulting in the forcible transfer of civilians within and from the Occupied Palestinian Territory, including the revocation of residency rights of Palestinians from East Jerusalem, evictions, home demolitions and the planned transfer of Bedouin communities, should be terminated immediately. Israeli planning and zoning policies and practices should be immediately modified to ensure adequate housing for all Palestinian residents of Area C and East Jerusalem.

56. The Government of Israel should fully comply with the advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, in particular by immediately halting the construction of the Wall and dismantling or rerouting the constructed section to the Green Line.